8/10/82

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,)
)
Plaintiffs)
)
vs.) Civil Action No. 76-1326
)
)
JERRY WILSON, et al.,)
)
Defendants)
)

OPPOSITION OF PLAINTIFFS TO FEDERAL DEFENDANTS' SECOND MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT OR FOR NEW TRIAL

On August 2, 1982 the federal defendants filed a second motion for judgment notwithstanding the verdict or for a new trial on the premise that the law governing official governmental immunity has been fundamentally altered by the U.S. Supreme Court's recent decision, Harlow v. Fitzgerald, ___ U.S.___, 50 U.S.L.W. 4815 (dec'd. June 24, 1982) and that this change governs the jury instructions given in the trial in this case back in December, 1981.

Assuming arguendo both that the federal defendants' motion is timely and that the holding in Harlow v. Fitzgerald applies nunc pro tunc, there is still no basis for setting aside the jury verdicts in this case for the instructions on which those verdicts were based are entirely consistent with Harlow.

Harlow v. Fitzgerald holds that bare allegations of official malice toward the plaintiff Fitzgerald were insufficient to overcome immunity and prevent summary judgment unless the official's conduct is claimed to have violated "clearly established statutory or constitutional rights of which a reasonable person would have known." Id., 50 U.S.L.W. 4820.

> If the law was clearly established, the immunity defense ordinarly should fail, since a reansonably competent public official should know the law governing his conduct.

Id. at 4820. Thus the inquiry becomes a totally objective one -- whether the conduct at issue violated a known right -- and if it did, any questions of the official's personal feelings become irrelevant. However, once it is shown that the official's conduct did violate a clearly established constitutional or statutory right, the issue of the official's subjective motivation re-enters the picture if punative damages are sought since a jury clearly can consider good or bad faith in determining whether to award punative damages.

In the instant case there never was any serious dispute that the rights at stake -- First Amendment rights to peacefully assemble and to political association -- were "clearly established" and had been for a long time. It is this fact which distinguishes the Hobson case from the two cases remanded by the U.S. Supreme Court in light of Harlow: Sanborn v. Wolfel, _____U.S._____, 50 U.S.L.W.3998.18 (remanded June 29, 1982) and Velde v. National Black Police Association, ____U.S._____, 50 U.S.L.W. 5033 (June 30, 1982), decision below at 631 F.2d 784 (D.C. Cir. 1980).

In Velde, government officials were sued for damages for failure to terminate federal law enforcement grants to local law enforcement agencies that discriminated on the basis of race and sex. While such official conduct may be a proper basis for injunctive relief, there is hardly a "clearly established" constitutional or statutory right to sue a federal official for damages for improperly administering a federal grant program. In Wolfel v. Sanborn, two parole officers were sued for damages for failing to hold a preliminary parole revocation hearing. The Sixth Circuit's decision, remanded by the U.S. Supreme Court, makes no finding that the right to such a hearing was clearly established and indeed notes that this issue was not raised at the trial. Instead, the decision and apparently the jury instructions in that case addressed solely the issue of the parole officials' subjective good faith.

Both cases thus stand in marked contrast to Hobson where the jury was properly instructed that:

> [T]he plaintiff's right to peaceably assemble, to petition the government for redress of grievances, and to associate for those purposes was clearly established at all times relevant to this case.

This instruction, which was proper under Harlow, left to the jury the question of whether the plaintiffs' clearly established First Amendment rights had been violated. Since the jury found that they had been, the defense of official immunity failed. The fact that in drafting the instructions pursuant to Wood v. Strickland, 420 U.S.308 (1975), the applicable law at the time, the Court spoke in terms of both the objective and now unnecessary subjective standards for judging immunity is harmless error if it is error at all since the immunity defense failed under the solitary objective test set forth in Harlow. This is particularly true since the jury had to concern itself with the defendants' subjective feelings anyway in order to arrive at a decision on punative damages.

The central concern throughout Harlow is to protect government officials whose conduct appears reasonable from protracted litigation as plaintiffs try to uncover some hidden and improper motivation for otherwise non-actionable conduct. In the instant case, involving a blatant conspiracy to deprive certain groups and individuals of their rights of free speech and association, that concern is absent. Clearly established rights have been violated and therefore Harlow's concerns are satisfied.

Accordingly, the defendants' second motion for judgment nothwithstanding the verdict or for a new trial should be denied.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing OPPOSITION OF PLAINTIFFS TO FEDERAL DEFENDANTS' SECOND MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT OR NEW TRIAL was mailed, postage paid, this 10th day of August, 1982 to:

Roberta Gross, Esq.
Assistant Corporation Counsel
District Building
14th & E Sts. N.W.
Washington, D.C. 20004

David H. White, Esq.
Civil Division
Dept. of Justice
10th & Penna. Ave. N.W.
Washington, D.C. 20530

Anne Pilsbury

ANNE PILSBURY

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RECEIVED APR 1 1982

JULIUS HOBSON, et al.,)
)
Plaintiffs)
)
)
v)
) Civil Action
) No. 76-1326
JERRY WILSON, et al.,)
)
Defendants)
)

PLAINTIFFS' RESPONSE TO
DEFENDANTS OPPOSITION TO
REQUEST FOR ATTORNEYS' FEES

Following a jury verdict in favor of eight of the nine plaintiffs in the aggregate amount of $711,937.50, plaintiffs moved for an award of attorneys' fees pursuant to 42 U.S.C. §1988.[1/] Both sets of defendants, D.C. and federal, have opposed the motion on various grounds. The contentions of the District of Columbia and federal defendants will be treated separately.

I. Contentions of Federal Defendants

A. Federal defendants claim 42 U.S.C. §1988 does not apply to this action.

Attorneys fees are recoverable in actions brought under sections 1981, 1982, 1983, 1985 and 1986 as well as certain statutes not here pertinent. This case was brought under §1985, alleging a conspiracy by defendants to violate the First Amendment rights of certain groups of citizens, viz. blacks and "New Left" activists. This cause of action, together with the claim arising directly under the First Amendment, Bivens v Six Unknown Agents, 403 U.S. 388(1971), was at the core of the case. The suggestion that §1985 was pled only in order to create liability for attorneys fees is frivolous and untrue. Furthermore, even if plaintiffs had not prevailed on their claims under §1985 but had prevailed only on the Consitutional "common law"

1/ Shortly before the trial in this case, the Equal Access to Justice Act, 28 U.S.C. §2412, became effective. It appears to provide an alternative basis for assessing attorneys' fees in this case against the federal defendants and/or the United States.

damages claims under Bivens, they would still be entitled to recover attorneys' fees where the same facts gave rise to both types of claims. Lund v Affleck, 587 F.2d 75 (1st Cir.1978).

B. Federal defendants claim plaintiffs are not "prevailing parties."

This contention does not warrant extensive comment. Eight of nine plaintiffs were awarded between $80,000.00 and $90,000.00 each. By any reasonable reading of the term "prevailing party", these eight plaintiffs prevailed. The defendants' argument relies on the large numbers of defendants who were dismissed. In another context, this fact might have some relevance but in this case it does not.

The actions complained of in this case arose out of clandestine intelligence operations conducted by the F.B.I. and the District of Columbia police department against the plaintiffs and others like them. Part of plaintiffs' counsels' job was to figure out which F.B.I. and Metropolitan Police Department officials were responsible. This information was hardly a matter of public record.

Initially the suit was filed against all persons known to be employed in the F.B.I. Washington Field Office and in the D.C. M.P.D. Intelligence Division in the time period covered by the complaint. It was only through extensive discovery that plaintiffs were able to eliminate some of these persons as defendants and add others who, it turned out, had actual responsibility for the surveillance of the plaintiffs and the attempts to interfere with their First Amendment activities. This trial and error approach to identifying the appropriate defendants was made necessary by the defendants' understandable reluctance to come forward and indicate which of them were primarily responsible. Even during the trial, the federal defendants continued to insist, not that the acts alleged did not occur, but that somebody else was responsible for them. In such a situation, the fact

that a number of defendants were dismissed - - often voluntarily by the plaintiffs - - in no way diminishes the plaintiffs' ultimate victory and in fact highlights one of the things that made this case such a difficult one to present.

C. Federal defendants claim the fee requested is so excessive that no fee should be granted.

Plaintiffs' application for fees indicates a total of 4,385.9 hours for all legal personnel. Before any adjustment under Copeland v Marshall, 641 F.2d 880 (D.C.Cir.1980) for the complexity of the case, the fee sought is $290,775.80. Taking into account that this represents the preparation and presentation of nine separate cases,joined in one action, and comparing this request with fee awards in other cases, it becomes clear that the request is hardly excessive. Cf. Lamphere v Brown University, 610 F.2d 46(lstCir.1979), ($272,600. fee for 3500 hours for a single plaintiff case); Herrera v Valentine, 653 F.2d 1220 (8th Cir.1981), ($88,214.95 fee awarded for simple police brutality case); EEOC v Sage Realty Corp.,____F.Supp.____; 26 F.E.P. 1319 (D.C.S.D.N.Y. Aug.1981), ($90,365.00 fee awarded for single Title VII case in which back pay of $33,000.00 was recovered); Copeland v Marshall ($206,000 fee sought for 3,602 hours work in a standard but protracted Title VII case in which the government conceded liability before trial; $160,000 fee awarded).

Plaintiffs acknowledge that their fee application includes time spent on the unsuccessful Women Strike for Peace case. It was not possible in the short time available to make an estimate as to how much of the total time was devoted solely to this plaintiff.

There was no legal research that was exclusively devoted to any one plaintiff. The only element of legal work which can be isolated by plaintiff is the review of files. The application includes 170 hours for time spent reviewing WSP files and preparing WSP witnesses for trial. This accounts

for $9,142.00 of the basic fee request before any multiplier is applied. Plaintiffs have reduced their fee request by this amount.

The tedious and time consuming job of reviewing barely intelligible files from the F.B.I. on Julius Hobson and the E.C.T.C. are included in the fee request because this work assisted greatly in presentation of the surviving plaintiffs' cases. So, too, depositions taken of persons later dismissed as defendants helped in the tasking of figuring out who was responsible for what.

Law Students

The four law students who worked on the case did so under the aegis of the Urban Law Institute of Antioch School of Law. They are in the same position as law clerks or paralegals working for a legal services program and compensation for such personnel has been widely recognized. Holt v Hutto, 363 F. Supp.194, rev'sd. on other grounds, 505 F.2d 194; E.E.O.C. v Sage Realty Corp., 26 F.E.P. 1319. Plaintiffs concur, however, that there should be some reduction in the amount of time claimed in view of the fact that some of the time spent may have been necessary for teaching purposes but not essential to trial preparation. Because the law students did perform essential work of a paralegal nature in cross-referencing files and preparing for depositions, as well as some assistance on research and, in the case of Anthony Murray, vital help in keeping track of documents at trial, they are entitled to be compensated. But because of the difficulty of factoring out the time that was arguably educational rather than essential to the litigation, plaintiffs will reduce the request for fees for the law students by forty percent (40%). This reduces the overall fee requested $6,890.52.

Miscellaneous comments on "excessive" fees. (See pages 8-14 of federal defendants' memorandum in opposition to counsel fees.)

1. Plaintiffs agree that the 60 hours travel time for attorney Anne Pilsbury should not be compensated at $75.00 an hour. An appropriate

figure would be $20.00 an hour.

2. Attorneys Mary Pike and Burton Wechsler, who assisted in preparation of jury instructions at the end of trial, did so to help out trial counsel and are not seeking attorneys fees; therefore, the request for $1,500.00 and $2,000.00 for these two attorneys is withdrawn.

3. Attorney Pilsbury claimed time for the deposition of Kolego and Shaffler because this time had been set aside for the depositions and was spent waiting for the parties to appear. During trial, attorney Pilsbury did routinely work through the lunch hour preparing witnesses and/or questions for the afternoon.

4. The defendants' argument that to pay fees on account of the work of the late David Rein would be a "windfall" is in poor taste. Surely it would be a windfall to the defendants if they could avoid paying fees to David Rein's widow and surviving law partners just because of David Rein's untimely death.

5. The request for $100.00 an hour for trial time for both attorneys Schember and Pilsbury is reasonable. This was not a case which could be tried by one, or even two lawyers. Even while the trial was going on, counsel and the Court were still engaged in discovery hearings that often took place before the actual trial began in the mornings. There was more than enough work to keep all three trial counsel busy. Nowhere in attorney Pilsbury's affidavit does she state that she returned to Washington, D.C. to conduct the trial because attorney Schember lacked trial experience. She returned because she was familar with the case and it required additional counsel to try it, as does any complex case.

All of the above reductions agreed to by the plaintiffs are listed in a summary chart attached for the convenience of the Court and counsel.

II District of Columbia defendants' opposition to award of attorney fees.

As noted in the Plaintiffs' Motion for Time Within Which to Respond on attorneys fees, counsel have not been served with the District of Columbia defendants' memorandum of points and authorities opposing counsel fees and so it is not possible to respond to it. But based on the chart which has been served, it appears the District has adopted the approach of the federal defendants in arguing that there should be a 50% reduction in fees because only ten of twenty original District defendants had judgment entered against them. For the reasons stated above, the approach has no merit.

The District also argues that the plaintiffs did not prevail on all issues. The only issues on which the plaintiff could be said not to have prevailed were the individual liability of defendants Bynum and Kolego and since the plaintiffs rights were vindicated, even for acts done by these two defendants, by the verdict against the District of Columbia municipal corporation and against Kolego and Bynum's supervisors, the plaintiffs still stand as prevailing parties and no reduction is in order. It is not necessary to prevail on every theory against every defendant to be entitled to fees. Where issues are interrelated and arise out of a single complex of facts, as here, success on any major issue entitles the plaintiffs to fees. Arkansas Community Organizations v Arkansas State Board of Optometry, 468 F.Supp 1254(D.C. Ark.1979).

Respectfully submitted,

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SUMMARY OF REDUCTIONS IN
REQUEST FOR ATTORNEYS FEES

Reason	Base Amount Reduction	Effect on Multiplied Amount
Women Strike for Peace	9,142.00	18,284.00
Law students	6,890.52	n/a
Withdrawn request for Pike and Wechsler	1,500.00 2,000.00	n/a n/a
Attorney's travel time at $20/hr. (Pilsbury)	3,300.00	6,600.00

TOTAL BASE FEE REQUESTED
BEFORE APPLYING MULTIPLIER = $267,943.28

CERTIFICATE OF SERVICE

I hereby certify that I have mailed, postage prepaid, a copy of the foregoing Plaintiffs' Response to Defendants' Opposition to Request for Attorneys' Fees this 25th day of March, 1982 to: David H. White, Esq., Department of Justice, counsel for FBI Defendants, and to George N. Barclay, Esq., Assistant Corporation Counsel, counsel for District of Columbia defendants.

Anne Pilsbury

Anne Pilsbury

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,)
Plaintiffs)
v.) Civil Action No. 76-1326
JERRY WILSON, et al.,)
Defendants)

PLAINTIFFS' OPPOSITION TO DISTRICT OF COLUMBIA DEFENDANTS' MOTION FOR STAY OF EXECUTION OF JUDGMENT PENDING RESOLUTION OF APPEAL

The District of Columbia defendants have requested a stay of execution of judgment until August 21, 1982 and then a subsequent stay pending appeal, "if any". The reason given for the stay until August 21, 1982 is that the District defendants needed that time to decide whether or not to appeal. Since the judgment previously entered in this case on July 22, 1982 did not become final due to the subsequent filing by the federal defendants of a second motion for judgment notwithstanding the verdict and earlier orders of this Court staying execution of judgment pending final judgment, the District's request for a stay until August 21, 1982 is now moot.

The District of Columbia defendant's second request -- for a stay pending appeal -- presents two problems. First, the request for such a ruling seems premature since no notices of appeal are yet due or have been filed. Second, the District defendants wish to be excused from the normal requirement that they post a supersedas bond as a condition for a stay. They cite the text of D.C.Code, 1981; Title 15, §705(d) as the grounds for their argument that none of the District defendants is required to post a bond because all defendants are either the District of Columbia itself or officers thereof. The problem with this argument is twofold. First, the section relied upon applies only to "any court in the District of Columbia". The doctrine of federal pre-emption precludes this language from applying to the United States District Courts even though they are, literally, located in the

District of Columbia. And second, the exception to posting a supersedas bond exists only for those litigants who were acting in their official capacity. While the term "acting in his official capacity" is capable of varying interpretations, the intent behind the bond exception makes clear that in this context it must mean officials who are sued in name only as representatives of their government agency.

When a suit is for all practical purposes against a government or government agency and there is no dispute but that the public purse will pay the judgment, it makes great sense to relieve both the government and its officials from posting a supersedas bond because "it is to be presumed the government is always ready and willing to pay its ordinary debts." Schell v. Cochran, 107 U.S. 625, 628 (1882), (holding no bond required to assure payment on appeal of improperly collected taxes in a suit against a customs official). See, generally, 7 Moore's Federal Prac. ¶62.07 for a discussion of when a suit is against "an officer of agency" of the United States and hence an exception to the bond requirement is in order.

But where, as here, there has been no assurance and no representation that the District of Columbia will indemnify or in any way stand behind the judgments entered against individual District of Columbia defendants, these individual defendants must be required to post a bond. Upon assurances that the normal presumption that the District of Columbia government will pay its debts applies, without reservation, here the plaintiffs would have no objection to the Court's excusing the municipal corporation from posting a bond.

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COUNSEL FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that I have mailed a copy of the PLAINTIFFS' OPPOSITION TO DISTRICT OF COLUMBIA DEFENDANTS' MOTION FOR STAY OF EXECUTION OF JUDGMENT PENDING RESOLUTION OF APPEAL to Roberta L. Gross, Esq., Assistant Corporation Counsel, District Building, 14th & E. St. N.W., Washington, D.C. 20004; and to David H. White, Esq., Deptartment of Justice, Civil Division, 10th & Penna. Ave. N.W., Washington, D.C. 20530 this 10th day of September, 1982.

Anne Pilsbury

ANNE PILSBURY

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs	)	
v	)	
JERRY WILSON, et al., Defendants	)	Civil Action No. 76-1326

AFFIDAVIT OF ANNE PILSBURY

I, Anne Pilsbury, being duly sworn do depose and state as follows:

1. I have been an attorney of record in Hobson v Wilson since the case was filed on July 16, 1976.

2. I am licensed to practice law in the District of Columbia and State of Maine. I received a J.D. from Antioch School of Law in May, 1975 and was admitted to the Bar of the District of Columbia in November, 1975. I received a B.A. degree from Penn. State University in 1965; a M.A. degree from American University in 1967.

3. I am at the present time and have at all times since this suit was filed been actively engaged in the practice of law, either as a sole practitioner or, briefly, in a small firm in 1975-1976.

4. During the early phases of the case, from January 1976 through 1977, I worked under the supervision of David Rein, Esq. who was the senior attorney on the case. I acted as his assistant, did most of the leg-work, contacting plaintiffs, investigation, initial drafting of pleadings, research and filing, and review of F.B.I. files on plaintiffs. Mr. Rein took an active part in the case and I did nothing without his approval. Although I would estimate he put in only about one-quarter to one-third of the time I did during this period, his time was obviously much more valuable

than mine. At that time (1976-1977), my normal billing fee was $40.00 an hour.

5. After moving to Maine to practice law in late 1977, I did not take an active role in the case until 1981. I reviewed the pleadings during this period and kept current on legal developments but have not included any time for this period in the breakdown that follows.

6. Starting in 1981, I again assumed an active role made necessary in light of the death of David Rein in August, 1979 and the fact the case was coming to trial. Since by this time, I had had considerable trial experience (state and federal, jury and non-jury trials), and had been in practice for six years, my normal hourly charge for a case of this complexity would be $100.00/hour for in-court trial time and $75.00/hour for trial preparation, depositions and other out-of-court work.

7. I have received no remuneration from anyone for my work to date on this case and have not been paid for any of my overhead or costs except for $ 187.00 I received to partially reimburse me for a trip to Nova Scotia in September, 1981 to interview former F.B.I. Special Agent Robert Wall.

8. The following is a statement of the time spent to date on this case by year, month and date. All meetings of counsel referred to for 1976 and 1977 took place at the offices of Forer & Rein in Washington, D.C. The typing and xeroxing was shared about evenly between Forer & Rein and Anne Pilsbury, Esq.

Counsel Time

Time	1976	Activity
2.0 hours	1/12/76) 1/13/76)	notice to D.C. re: claim; mtg. w/ D. Rein.
1.5	1/21/76	mtg. w/ plfs.; investigation.
1.4	2/11/76	mtg w/ plfs.; investigation.
2.1	2/20/76	mtg. w/ David Rein, Ralph Temple re: facts, plfs.
1.6	3/3/76	investigation; interviews w/ plfs.
2.0	3/4/76	review Cullinan report from D.C.
.8	3/8/76	investigate names of F.B.I. defendants.
.9	3/9/76	investigate names of F.B.I. defendants.
1.5	3/29/76	mtg. w/ David; investigation; research.
2.0	4/8/76	mtg. w/ plfs.; investigation; research.
2.0	4/9/76	mtg. w/ David, BurtWechsler, Ralph Temple.
2.5	5/5/76	review files in I.P.S., other cases.
1.0	5/7/76	mtg. w/ David, Ralph Temple; drafting complaint, research.
2.5	5/14/76	Rich Pollock - mtg.
2.1	5/27/76	drafting complaint; research.
1.0	6/3/76	mtg. w/ Abe Bloom.
1.0	6/7/76	draft complt.; research.
1.0	7/13/76	mtg. w/ David.
1.0	7/16/76	FILED COMPLAINT.
2.5	8/4/76	review F.B.I. interrogatories to plaintiffs.
.8	8/20/76	opposition to Sullivan Motion to Quash service.
2.0	9/9/76	prepare answers to F.B.I. interrogatories.
.5	9/10/76	begin prepare plfs.' interrogatories.
1.5	9/13/76	both of above.
2.0	9/15/76	mtg. w/ David on interrogatories to F.B.I.

1.5	9/16/76	mtg. w/ Abe & Sammie.
1.0	9/20/76	research; motion to quash. (DC)
1.8	9/20/76	rec'd DC answer; motion to quash and motion to dismiss: reviewed same.
1.1 2.1 6.0	9/23/76) 9/24/76) 9/25/76)	preparing plfs.' answers to first set of F.B.I. interrogatories; meeting w/ plfs.; mtg. w/ David Rein; investigation; drafting; tracking down plfs. to sign; filing.
.6	9/27/76	" " "
1.0	9/28/76	" " "
1.5	10/2/76	" " "
6.0	10/14/76	" (Bloom, ECTC, Abbott)
8.0	10/5/76	" (Pollock, WSP)
6.0	10/6/76	" (WPC)
6.0	10/7/76	" (Booker, Hobson)
8.0	10/9/76	more work on plfs'. answers to F.B.I.; also work on plfs. own to F.B.I.
1.0	10/9/76	" " "
.7	10/12/76	" " "
.8	10/13/76	" (Eaton)
2.0	10/15/76	D.C. motion to quash opposition; Jagen & Shoffler.
1.0	10/19/76	draft our interrogatories to F.B.I.
.5	10/22/76	conf. w/ David on our interrogs. to F.B.I.
2.0 .8	10/26/76 10/26/76	prepare our interrogatories to F.B.I. Eaton interrog. to client to sign.
3.5	10/27/76	Plf's. interrogs.to F.B.I.; draft.
.5	10/29/76	file Eaton interrogs. to F.B.I.
1.0	11/1/76	D.C. interrogs. to pltfs.; drafted.
1.5	11/2/76	D.C. interrogs. to pltfs'. drafted.
2.0	11/3/76	serve plfs'. answers to F.B.I. interrogatories
.1	11/5/76	misc.
.2	11/9/76	misc.
1.5	11/10/76	mtg. w/ David; review status of case.

1.0	11/22/76	mtg. w/ David, Ralph Temple; re: status.
1.0	11/30/76	mtg. w/ David; research.
	Total 1976= 110.9 hours	
	1977	
2.0	1/12/77	motion to compel by plfs.
4.0	1/18/77	mtg. w/ David; review F.B.I. files on plfs.
4.0	1/19/77	review F.B.I. files on plfs.
2.0	1/20/77	review F.B.I. files on plfs.
.8	1/24/77	"
.6	1/25/77	"
1.0	2/11/77	STATUS CALL w/ Judge Pratt.
.5	2/14/77	review F.B.I. files.
.4	2/15/77	"
2.0	3/10/77	"
.2	3/15/77	misc.
1.0	3/15/77	mtg. of counsel; research.
3.0	3/19/77	review F.B.I. files on plfs.
1.0	3/21/77	mtg. w/ David re: informer privilege.
1.0	3/26/77	research on privilege.
2.0	3/31/77	two trial memos & motion; death of Hobson.
2.0	4/4/77	reply to Binsted (DC) motion to dismiss/ quash.
2.5	4/11/77	plfs. interrogs. to D.C.; draft; prepare opposition to Binsted.
1.0	4/14/77	mtg. w/ counsel and research.
1.0	5/10/77	COURT APPEARANCE.
1.0	5/17/77	mtg. of counsel.
2.5	5/19/77	motion to show cause, against D.C.
.6	5/26/77	research; privilege issue re: F.B.I.
1.0	5/30/77	research; privilege.
.8	5/31/77	research; privilege.

1.0	6/28/77	STATUS CALL.
.8	7/12/77	mtg. w/ Dave re: status discovery.
2.0	7/13/77	interrogatories reviewed.
.5	7/14/77	mtg. w/ counsel.
5.5	7/16/77	reviewed F.B.I. files on Wash. Peace Center, Eaton, Pollock, ECTC.
.4	7/18/77	check on request for doc.
1.2	7/20/77	interrog. due; took to court.
1.0	7/21/77	mtg. w/ counsel.
3.0	7/23/77	motion for sanctions against D.C.
2.1	7/26/77	review Eaton file.
.5	9/8/77	mtg. w/ counsel re: amended complaint.
2.1	10/7/77	draft amended complt.
	Total 1977 = 58.0 hours	

NOVEMBER 1977 - DECEMBER 1980 — not active although received and reviewed pleadings.

1981

* 10.0	5/20/81 - 5/21/81	travel to D.C.
6.0	5/22/81	mtg. w/ counsel; prepare for depositions of D.C. defendants.
5.0	5/23/81	review discovery material to date on D.C. defendants.
5.0	5/25/81	" "
6.0	5/26/81	DEPOSITIONS: Kolego and Jagen.
6.0	5/27/81	DEPOSITIONS: Binsted and Binsted.
6.0	5/28/81	DEPOSITIONS: Shoffler and Gildon.
6.0	5/29/81	DEPOSITIONS: Scrapper and Mahaney.
* 10.0	5/30/81	Travel to Maine.
.4	9/81	t/c w. counsel re: trial prep; and Robt. Wall.
.5	9/81	t/c w/ Robt. Wall re: interview.
* 20.0	9/15 - 9/16	travel to Nova Scotia to see Robt. Wall.

3.5	9/16	interview w/ Robert Wall.
*20.0	9/16-9/17	return to Maine
.6	9/22/81	letter to counsel re: trip, trial prep.
.5	10/13/81	t/c w. counsel re: trial prep.
.4	10/19/81	t/c to Robt. Wall re: trial.
.4	10/20/81	t/c w/ Don Gurewitz re: trial.
2.1	10/29/81	interview Don Gurewitz in Cambridge, Mass.
.5	10.31/81	t/c w. Sid Peck re: testimony. (long dist.)
4.0	11/5/81	research; trial preparation.
.3	11/11/81	t/c w/ Sid Peck (long dist.)
.4	11/12/81	t/c w/ counsel re: voir dire; trial.
18.0	11/17/81	TRIAL PREPARATION: preparing charts for each plaintiff; reviewing files; preparing plfs. to testify.
1.0	11/18/81	Pre-trial Conference in Court.
9.0	11/18/81	TRIAL PREPARATION: mtg. w/ plfs.; preparing testimony; voir dire questions.
1.0	11/19/81	Pre-trial Conference (final) in Court.
9.5	11/19/81	TRIAL PREPARATION w/ pltfs.
12.0	11/20/81	TRIAL PREPARATION w/ pltfs. and other witnesses.
10.5	11/21/81	TRIAL PREPARATION for plfs.
12.0	11/22/81	TRIAL PREPARATION for plfs; interviewing Rev. Doug Moore.
8.0	11/23/81	TRIAL BEGINS: picked jury (primary responsibility).
8.0	11/24/81	TRIAL CONTINUES: presented direct exam. Tina Hobson, Abe Bloom.
8.0	11/25/81	TRIAL CONTINUES: presented direct exam. Helen Gurewitz, Rich Pollock.
9.5	11/26/81	Thanksgiving (no court) TRIAL PREPARATION of plfs.
8.5	11/27/81	TRIAL PREPARATION OF plfs. and other witnesses.
7.0	11/28/81	TRIAL PREPARATION of plfs. & other witnesses.

9.5	11/29/81	TRIAL PREPARATION of plfs. & other witnesses.
8.0	11/30/81	TRIAL CONTINUES: presented direct exam. of Carol Cullom; Reginald Booker.
4.0	11/30/81	TRIAL PREPARATION for next day.
8.0	12/1/81	TRIAL CONTINUES: presented direct exam. of Arthur Wascow; Sammie Abbott; David Eaton.
4.0	12/1/81	TRIAL PREPARATION for next day.
8.0	12/2/81	TRIAL CONTINUES: Eaton, Sid Peck.
3.0	12/3/81	TRIAL CONTINUES: (F.B.I. witnesses presented by Dan Schember).
3.5	12/3/81	TRIAL PREPARATION for next day.
8.0	12/4/81	TRIAL CONTINUES: presented direct exam of Chas. Brennan.
8.0	12 5 81	TRIAL PREPARATION: D.C. Police case.
6.5	12 6 81	" " "
8.0	12/7/81	TRIAL CONTINUES: (D.C. police witnesses Suter and Acree presented by Dan Schember).
5.0	12/7/ 1	TRIAL PREPARATION for D.C. witnesses.
8.0	12/8/81	TRIAL CONTINUES: presented direct exam of Jerry Wilson, Zelloe, John Mahaney, Chris Scrapper, Blanco Drummond.
.5	12/8/81	interview w/ Ann Kolego.
3.5	12/8/ 81	Trial Prep. for next day.
8.0	12/9/81	TRIAL CONTINUES: reading from Church Report and Winkleman investigation. Plaintiffs rest.
2.0	12/9/81	draft motion for sanctions re: Ann Kolego
8.0	12/10/81	TRIAL CONINTUES: F.B.I. defense; conducted cross-exam of Brennan.
3.0	12/10/81	Trial Prep. for next day.
8.0	12/11/81	TRIAL CONTINUES: DC defense. Conducted cross exam of Jagen and Kolego.
8.5	12/12/81	TRIAL PREPARATION: rebuttal.
5.5	12/13/81	TRIAL PREP. (rebuttal).
6.0	12/14/81	TRIAL CONTINUES: presented rebuttal witnesses: Rev. Doug Moore, Rich Pollock, Abe Bloom, David Eaton and Mayor Marion Barry.

3.0	12/14/81	prepare jury instructions, research.
2.5	12/15/81	mtg. w/ Court on jury instructions.
6.0	12/15/81	prepare closing argument.
6.0	12/16/81	TRIAL CONTINUES: closing argument for plaintiffs.
8.0	12/17/81	TRIAL CONTINUES: jury instructed. Jury out at 12:10 p.m. Jury deliberations begin; hearing on juror matter.
8.0	12/18/81	Jury out: hearing w/ Mary B. Pike on juror matter.
8.0	12/21/81	Jury out.
8.0	12/22/81	Jury out.
8.0	12/23/81	VERDICT (completed at 6:00 p.m.)

TOTAL TRIAL TIME = 159.0 hours

TOTAL OTHER 1981 = 284.10 hours

TOTAL 1981 = 443.10 hours

* Indicates travel time for which a lower hourly rate would be appropriate.

9. David Rein took primary responsibility for the following matters during the period I was his assistant (1976-1977) as well as for overseeing all other matters:

a. Plaintiffs' Opposition to Defendant Kelley's Motion for Partial Reconsideration of June 24, 1977 Order.

b. Plaintiffs' Opposition to claim of Privilege by Attorney General (Oct.1977).

c. Reply to D.C. Defendants' Opposition to Plaintiffs' Motion for Sanctions. (Sept. 1977).

My best estimate of the time he gave to the case from its inception until November, 1977 is about fifty (50) hours.

10. Mary B. Pike, Esq. and Burton D. Wechsler, Esq. assisted counsel during trial in preparation of jury instructions and legal research on the issue of qualified immunity as well as other matters. Affidavits

from each of them will be submitted shortly.

STATE OF MAINE
OXFORD, ss:

I have read the foregoing affidavit and it is true and correct to the best of my knowledge and belief.

Anne Pilsbury

Anne Pilsbury
17 Danforth Street
Norway, Maine
(207) 743-5583
Counsel for plaintiffs

Dated: December 29, 1981

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 29th
DAY OF DECEMBER, 1981.

NOTARY PUBLIC

MY COMMISSION EXPIRES
DECEMBER 1, 1985

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,

Plaintiffs,

v.

JERRY WILSON, et al.,

Defendants.

Civil Action No. 76-1326

FILED
JUL 28 1982
JAMES F. DAVEY, Clerk

ORDER

Plaintiffs moved on January 5, 1982, for an award of attorney's fees. Defendants opposed the motion, and by Order of March 14, 1982, the Court directed that the parties make further submissions on the questions whether attorney's fees should be awarded and, if so, in what amount. Plaintiffs subsequently filed a statement amending their claim for fees and withdrawing certain portions of their original application. In order to resolve the issues raised by plaintiffs' motion, plaintiffs must file a new set of charts and tables stating all their claims comprehensively and reflecting any changes they wish to make with respect to the application they filed on January 5, 1982. Plaintiffs' new fee application, and any response to it from defendants, should conform to rules developed in recent decisions of the Court of Appeals relevant to fee awards in civil-rights actions. See, e.g., Sierra Club v. Gorsuch, No. 79-1565 (D.C. Cir., July 16, 1982); Donnell v. United States, No. 81-1471 (D.C.Cir., June 25, 1982); National Ass'n of Concerned Veterans v. Secretary of Defense, 675 F.2d 1319 (D.C.Cir. 1982). Accordingly, it is this 27th day of July 1982 hereby

ORDERED: that plaintiffs file a fresh application for any fee award they seek in this action, together with new tables, charts, and appendices to replace any previously filed by them, on or before August 31, 1982; and it is further

ORDERED: that defendants may file responses to any filing by plaintiffs on or before September 14, 1982, and plaintiffs may file a reply to any response by defendants on or before September 24, 1982.

Louis F. Oberdorfer
UNITED STATES DISTRICT JUDGE

8

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,

Plaintiffs,

v.

JERRY WILSON, et al.,

Defendants.

Civil Action No. 76-1326

FILED

JUL 22 1982

JAMES F. DAVEY, Clerk

ORDER

The five federal defendants filed on June 11, 1982 a motion for stay of execution of judgment. To permit prompt resolution of the motion, it is this 22d day of July 1982 hereby

ORDERED: that plaintiffs may file a response to the federal defendants' motion for stay of execution of judgment on or before July 29, 1982.

Louis F. Oberdorfer
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,

Plaintiffs,

v.

JERRY WILSON, et al.,

Defendants.

Civil Action No. 76-1326

FILED

JUL 22 1982

JAMES F. DAVEY, Clerk

ORDER

Although the Court denied the motion of plaintiff Washington Area Women Strike for Peace for judgment notwithstanding the verdict in the Memorandum filed June 1, 1982, the Order accompanying the Memorandum did not recite the disposition of plaintiff's motion. See Hobson v. Wilson, Civil Action No. 76-1326 (D.D.C., June 1, 1982), mem. op. at 7. Accordingly, it is this 22d day of July 1982 hereby

ORDERED: that the Order filed in this action on June 1, 1982, be amended to add the following paragraph:

"ORDERED: that the motion of plaintiff Washington Area Women Strike for Peace for judgment notwithstanding the verdict be denied."

Louis F. Oberdorfer
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.	:	
Plaintiffs	:	
v.	:	Civil Action No. 76-1326
JERRY WILSON, et al.	:	
Defendants	:	

MOTION OF DISTRICT OF COLUMBIA DEFENDANTS FOR STAY OF EXECUTION OF JUDGMENT PENDING RESOLUTION OF DISTRICT COLUMBIA RESOLUTION OF DISTRICT OF COLUMBIA DEFENDANTS' APPEAL, IF ANY

District of Columbia defendants (hereinafter "D.C. defendants") move this Court to stay execution on the judgment entered in this case on July 22, 1982 without requiring a supersedeas bond, until 30 days from entry of said order up to and including August 21, 1982. D.C. defendants further move this court to continue the effect of any stay so entered without requiring a supersedeas bond during the pendancy of any appeal which may be noted by District of Columbia defendants. As grounds for the motion and as more fully set forth in the memorandum of points and authorities filed herewith, these defendants assert that (1) Entry of a stay is necessary so that D.C. defendants will have an opportunity to note an appeal, should they choose to do so, before judgment is executed; (2) The District of Columbia defendants are "officers" of the District of Columbia within the meaning of D.C. Code, 1981, §15-705(d), thus exempting these defendants from filing a supersedeas bond; and (3) where as in this case, the judgment involves money only, a stay issues as a matter of right, and without

requiring a supersedeas bond, upon the filing of an appeal by District of Columbia defendants who are "officers" within the meaning of D.C. Code, 1981, §15-705(d).

Judith W. Rogers (per rg)
JUDITH W. ROGERS
Corporation Counsel, D.C.

John H. Suda (per rg)
JOHN H. SUDA
Deputy Corporation Counsel, D.C.

Roberta L. Gross
ROBERTA L. GROSS, [#322669]
Assistant Corporation Counsel, D.C.
Attorney for Defendants
District Building - Rm. 312
Washington, D.C. 20004
727-6297

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion of District of Columbia Defendants For Stay of Execution of Judgment Pending Resolution of District of Columbia Defendants' Appeal, if Any, together with Memorandum of Points and Authorities filed in support thereof, and Order, was mailed, postage prepaid, to Anne Pilsbury, 17 Danforth Street, Norway, Maine, Herb Semmel, Urban Law Institute of the Antioch School of Law, 1624 Crescent Place, N.W., Washington, D.C. 20009, Arthur Spitzer, American Civil Liberties Union, Suite 301, 600 Pennsylvania Avenue, S.E., Washington, D.C. 20003, attorneys for plaintiffs, David H. White, Department of Justice, 10th and Pennsylvania Avenue, N.W., Washington, D.C. 20530, attorney for federal defendants, this 27th day of August, 1982.

Roberta L. Gross
Assistant Corporation Counsel, D.C.
Attorney for Defendants
District Building - Rm. 312
Washington, D.C. 20004
727-6297

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS JOBSON, et al. :

Plaintiffs :

v. : Civil Action No. 76-1326

JERRY WILSON, et al.

Defendants :

MEMORANDUM OF POINTS AND AUTHORITIES OF DISTRICT OF COLUMBIA DEFENDANTS FOR STAY OF EXECUTION OF JUDGMENT PENDING RESOLUTION OF DISTRICT OF COLUMBIA, DEFENDANTS' APPEAL, IF ANY

Plaintiffs have brought suit against the D.C. defendants, including the then Chief of Police Jerry Wilson, supervisory officers with the Metropolitan Police Department (hereinafter the "MPD") and several line officers with the M.P.D. The D.C. defendants were sued for acts done in their official capacity as agents and/or employees of the M.P.D. which allegedly impeded plaintiffs' efforts to express their opposition to government policies in the 1960's and 1970's.

On December 23, 1981, the jury returned a verdict against various defendants. The money judgment entered by this Court on June 1, 1982 against D.C. defendants totals $449,437.50. On July 22, 1982, the Court resolved in its orders and accompanying memorandum all outstanding issues except attorney's fees. The Court in its orders of July 22, 1982 denied plaintiffs' request for injunctive relief.

As such, the judgment entered against D.C. defendants is now final. The instant motion seeks a stay of execution of judgment without requiring D.C. defendants to file a supersedeas bond pending resolution of the District of Columbia defendants' appeal, if any.

Argument

Rule 62(b) of the Federal Rules of Civil Procedure states in relevant part. "When an appeal is taken, the appellant by giving a supersedeas bond may obtain a stay subject to the exceptions contained in subdivision (a) of this rule." Under that rule and the case law, where the judgment involves money only, a stay issues as a matter of right upon the filing of a supersedeas bond. American Manufacturers Mutual Insurance Co. v. American Broad casting - Paramount Theatres, Inc. 87 S.Ct. 1, 3(1966); Daime v. Price, D.C. Mun. App. 71 A.2d 611, 612 (1950), 11 Wright and Miller, Federal Practice and Procedure, §2905 (1973). A stay is discretionary only when a judgment relates to injunctive or other non-monetary relief. However, if a judgment includes both a money award and a grant or denial of an injunction, a supersedeas stays the money award but does not apply to that part of the judgment that deals with injunctive relief. Standard Dredging Corp. v. Henderson, 150 F. 2d 78 (5th Cir. 1945); Wright & Miller, supra, §2905. Since, in the instant case, the Court denied plaintiffs' request for injunctive relief, the only question is whether the D.C. defendants need to post a supersedeas bond to obtain a stay pending appeal. For the following reasons, the D.C. defendants' right to an automotic stay is not conditioned upon the posting of a supersedeas bond.

The D.C. defendants are explicitly exempted by statute from giving a supersedeas /bond. D.C. Code, 1981, §15-705(d) provides in relevant part:

> Neither the United States nor the District of Columbia, nor any officer of either acting in his official capacity, may be required to give bond or enter into undertaking to perfect an appeal . . . in or of any court in the District of Columbia for which a bond or

undertaking is required by law or rule of court (emphasis supplied).

The word "officer" /in the context of this statute includes the present D.C. defendants. The word "officer" does not have an established meaning. It is a "term of variable import, whose connotation changes with the setting in which it is used." Morgenthau v. Barrett 71 App. D.C. 148, 150, 108 F.2d 481, 483 (1939). The word "officer" has been construed in different contexts to mean a variety of low exhelon employees. State of Utah v. Live say, 312 F. Supp. 1397 (D. Utah, 1970) (revenue agents of the Internal Revenue Service held to be exempt by 28 U.S.C. §2408 from filing bonds when sued for acts done in their official capacities); See Camer v. United States, 350 U.S. 399, 405 (1956) (marshals, bailiffs, and court clerks are "officers" within the meaning of 18 U.S.C. §401 (2), which authorizes punishment of contempt for misbehavior in official transactions); Callahan v. United States, 74 App. D.C. 281, 283, 122 F.2d 216, 218 (1941)(the word "officer" in other legislation has been held to include a clerk in the customs services, a postal clerk, a court reporter, and a penal guard). Specifically, with regard to §15-705(d), the word "officer" has been construed by the D.C. Court of Appeals, for purposes of a stay pending appeal, as including any police officer of the District of Columbia who is sued for acts done in his official capacity in the case Noble A. Whitehead, et al. v. Michael K. Smith, et al. Civil Action No. 5356-75, D.C. App. No. 79-526 (presently pending en banc review on the merits of the case).

Since it is clear that the D.C. defendants do not have to give a supersedeas bond upon filing notice of appeal, it makes no sense to impose such a requirement during the 30 days period the D.C. defendants have to file their appeal.

In light of the foregoing discussion, the motion of D.C. defendants for stay of execution of judgment pending resolution of D.C. defendants' appeal, if any, should be granted.

JUDITH W. ROGERS
Corporation Counsel, D.C.

JOHN H. SUDA
Deputy Corporation Counsel, D.C.

ROBERTA L. GROSS, [#322669]
Assistant Corporation Counsel, D.C.
Attorney for Defendants
District Building - Rm. 312
Washington, D.C. 20004
727-6297

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al. :

Plaintiffs :

v. : Civil Action No. 76-1326

JERRY WILSON, et al. :
Defendants :

ORDER

Upon consideration of the motion of the District of Columbia defendants to stay execution of judgment pending resolution of District of Columbia defendants' appeal, if any, the memorandum of points and authorities filed in support thereof, and the record herein, it is by the Court this _____day of _____, 1982.

ORDERED: That the motion of District of Columbia defendants for a stay of execution pending resolution of said defendants appeals, if any, be, and the same is, hereby granted; and it is

FURTHER ORDERED: That execution on the judgment against D.C. defendants be, and the same is, hereby stayed until August 21, 1982 without requiring the D.C. defendants to post a supersedeas bond; and, it is

FURTHER ORDERED: That if the District of Columbia defendants note an appeal, pending that appeal without / this stay shall continue an effect the District of Columbia defendants posting in supersedeas bond.

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs	)	
vs.	)	Civil Action No. 76-1326
JERRY V. WILSON, et al., Defendants	)	

PLAINTIFFS' RESPONSE TO DEFENDANTS JUNE 11, 1982 MOTION FOR STAY OF EXECUTION OF JUDGMENT

The Court has ordered the plaintiffs to respond by July 29, 1982 to the defendants' June 11, 1982 Motion for Stay of Execution of Judgment. (The motion relates only to the federal F.B.I. defendants).

That motion did not seek a stay pending appeal but sought only to assure that the stay granted earlier pending disposition of the motions for a new trial or judgment nothwithstanding the verdict under Federal Rule 62(b) remained in effect until entry of final judgment. Since Federal Rule 54(b) makes clear that no judgment is final until all claims are ruled upon and on June 11, 1982 there were still outstanding claims, the plaintiffs did not feel the June 11, 1982 motion was necessary but in any event have no objection to it.

It is important to note that no motion has yet been filed for a stay pending appeal pursuant to Federal Rule 62(d). Such a motion would have been premature until entry of final judgment . Since final judgment has now been entered, plaintiffs anticipate that a motion will soon be forthcoming. Plaintiffs would like to reserve the right to comment at that time if the defendants seek to be relieved in any way from the normal requirement that, as a condition for obtaining a stay on appeal, they post a supersedeas bond. See generally Federal Prescription Servic, Inc. vs. American Pharmaceutical Association, 636 F.2d 755 (D.C. Cir. 1980).

The plaintiffs would simply note at this time that four of the five defendants are no longer federal officials, having retired, and thus Rule 62(e) governing stays on appeals taken by the United States "or an officer or agency thereof" would not govern in this case. Given the defendants' repeated representations during trial that no part of the judgment entered against the F.B.I. defendants would be paid by the Federal Government, plaintiffs question whether the provisions of Rule 62(e) would even apply in the case of the one defendant who is still an active F.B.I. employee, Mr. Gerould Pangburn.

ANNE PILSBURY
17 Danforth Street
Norway, Maine 04268
(207) 743-5583

HERB SEMMEL
URBAN LAW INSTITUTE OF THE
ANTIOCH SCHOOL OF LAW
1626 Crescent Place N.W.
Washington, D.C. 20009
(202) 265-9500

Counsel for Plaintiffs

Of Counsel:

Arthur Spitzer, Esq.
American Civil Liberties Union Fund
Suite 301
600 Pennsylvania Ave. S.E.
Washington, D.C. 20003

CERTIFICATE OF SERVICE

I hereby certify that I have mailed, postage prepaid, this 27th day of July, 1982 a copy of the Plaintiffs' Response to Defendants' June 11, 1982 Motion for Stay of Execution of Judgment to David H. White, Esq., Dept. of Justice, Civil Division, 10th & Penna. Ave. N.W., Washington, d,c, 20530 and to Roberta L. Gross, Esq., Asst. Corp. Counsel, District Building, Room 312, Washington, D.C. 20004.

ANNE PILSBURY

Filed
10/28/77

Anne Pilsbury
ATTORNEY AT LAW
17 Danforth Street - Norway, Maine 04268

TELEPHONE
207 / 743-5583

CENTER LOVELL
207 / 925-1144

January 24, 1982

Mrs. Helen Gurewitz
1112 Quebec Street
Silver Spring, Maryland 20903

Dear Helen,

After talking with you today when you asked what my feelings about counsel for the appeal were, you and I agreed that it would be a good idea if I said whatever I had to say in a letter which you could then share with everyone at the meeting planned for January 26th.

Of course I have thoughts on the appeal and I have discussed them with anyone who has asked. I have not made a point of calling all the plaintiffs to give each person my views because I was afraid it would complicate an already complicated situation. I have tried to say the same thing to anyone who has called but I may not always have succeeded.

I have been asked if I would be able to be responsible for the appeal. I would be willing to do it, I would be happy to do it but I would never try to do it alone. I feel the case at this point needs additional more experienced appellate counsel. I have had some appellate experience, so has Dan. I think we need more. My own recommendation would be to bring in Mary Pike, who has more experience than either Dan or I, and who worked on the SWP case which presents many of the same issues. I know her work and it is excellent. She knows the type of political issues the case presents and understands who the plaintiffs are. I think she is someone everyone, plaintiffs and lawyers, could work well with. Burt Wechsler worked with her at Antioch and she used to practice with John Karr, if you need someone local to talk with about her work.

In terms of the option of just continuing with the same three lawyers who worked on the trial, I have these comments. We had problems. They were not, in my opinion, minor and did not simply involve differences in personality or style. I did not feel Dan, who was supposed to be acting as lead counsel, had a good grasp on the amount of work which needed to be done for a trial or on his and J.E.'s abilities. This was probably due to the fact that he had never had a trial before but his failure to inform me of this and his willingness to assume a lead role despite lack of experience gives me serious pause. I have told Dan this. In our business, you have to be pretty coldly objective about your own limitations. I don't feel they were. It is this impression which makes me uncomfortable about his acting as lead counsel on the appeal.

If there is anyway you can express my reservations without going into the

Filed:
10/28/77

detail I have above, I would appreciate it. The first three paragraphs of this letter contain my recommnedation and the fourth contains the reason. On the one hand, I know how you feel about speaking frankly and everyone has a right to know the basis for my concerns, but it would be my preference that if the plaintiffs are willing to take my word for the fact there were problems, you could skip the details.

I recognize the very great dedication that Dan and more recently J.E. have shown to the case and the good work each has done. I have no desire to see them shoved aside. But I do want to see someone with more experience in charge. I figured it would be easier for everyone if that wasn't me. I am prepared to take as much or as little responsibility from here on in as you folks feel appropriate. All I want is to see this damn case won finally and for good.

Yours truly,

Jim

Filed
10/28/77

AMENDED COMPLAINT
(Damages and Injunctive Relief)

JURISDICTION

1. This is an action for damages for violation of the plaintiffs' First, Fourth, Fifth and Ninth Amendment rights, for violation of 42 U.S.C. §§ 1985(c) and 1986, for violation of Federal and District of Columbia laws governing the interception of oral communications, and for trespass, conversion and invasion of privacy.

2. The jurisdiction of the Court is based on 28 U.S.C. §§ 1331, 1343(1), (2) and (4); 1337; and 1355. The amount in controversy exceeds $10,000 exclusive of interests and costs, for each plaintiff.

PARTIES

Plaintiffs

3. Julius Hobson, resident of the District of Columbia and member of the D.C. City Council, has been an active leader in community activities, including the anti-war movement since before 1964 through the present.

4. Abraham Bloom, an electronic engineer and a resident of Maryland, has been, since before 1964, active in community affairs including the anti-war movement and was one of the principal organizers of the Washington Area Peace Action Coalition and is its present chairperson.

5. Arthur Waskow, a resident of the District of Columbia, has since 1964 been a fellow at the Institute for Policy Studies, a private social research organization.

6. Tina Hobson, a resident of the District of Columbia and an employee of the Federal Energy Administration, has been

an active leader in community affairs, including the anti-war movement and the women's movement since before 1964 through the present. From 1967 through 1969, she was Director of the Federal Women's Program at the U. S. Civil Service Commission.

7. Reverend David Eaton, a resident of the District of Columbia, has been since 1969 the Minister of All Souls' Unitarian Universalist Church in Washington, D.C., and has been since before 1964 an active leader in community affairs, including the anti-war movement.

8. Sammie Abbott, a resident of Maryland and a graphic artist, has been since before 1964 an active leader in community affairs, including the anti-war movement, and is publicity coordinator for the Emergency Committee on the Transportation Crisis.

9. Richard Pollock, a resident of the District of Columbia, is a free-lance journalist and was active in the anti-war movement as a college student (1969-1971) and subsequently.

10. The Washington Peace Center is a private, non-profit organization having as one of its chief goals the diversion of government spending from military armaments to peaceful, domestic programs and which has, since 1964 through the present, carried out local and nationwide programs to further these goals.

11. Washington Area Women Strike for Peace (WSP), the local branch of the national Women's Strike for Peace, is a private, non-profit organization whose goals and activities are dedicated to mobilizing women as a force for peace both in their own communities and in the nation and in an effort to achieve their goal, WSP, from 1964 through the present, organized meetings, marches and demonstrations of women and men to express their members' opposition to the United States' military involvement in Indochina.

12. The Emergency Committee on the Transportation Crisis is a private, non-profit association of local area residents opposed to unnecessary and excessive freeway construction in the District of Columbia and environs and who urge and support local government efforts to plan for human beings rather than solely for automobile travel and storage; ECTC has been active since 1965.

13. Reginald H. Booker, a resident of the District of Columbia and an employee of the D.C. Department of Human Resources, is Vice-President of the Black United Front, an organization he helped establish in 1967.

Defendants

14. Defendant John B. Layton and his successor, defendant Jerry V. Wilson, served successive terms as Chief of the Police Department of the District of Columbia during the period relevant to this complaint, viz. 1964-1974. As Chief of Police, defendants Layton and Wilson were responsible for the formulation, administration and implementation of Metropolitan Police Department policy and practices concerning political surveillance. Defendants Zanders, Zink, Ferguson, Acree, and Herlihy had supervisory responsibility for the operations of the Intelligence Division of the D.C. Police Department during some or all of the period 1964-1974.

15. Defendants Gildon, Shoffler, Ferguson, Suter, Day, Scrapper, Bynum, Jagen, and Mahaney are members of the Metropolitan Police Department and were employed by or assigned to the Intelligence Division of the Police Department during some or all of the period 1964-1974.

16. Defendants Markovich, Binsted, Fulcher and other unknown persons were paid informants of the Metropolitan Police Department during the period of 1964-1974.

17. Clarence M. Kelley is Director of the Federal Bureau of Investigation (FBI), a position he has occupied since July, 1973.

18. William C. Sullivan, a resident of New Hampshire, is a retired official of the FBI and was during most of the period 1964-1974 Assistant Director of the FBI in charge of the Intelligence Division and had responsibility for administering, inter alia, the FBI's counter-intelligence programs.

19. Charles D. Brennan is a retired official of the FBI who, during most of the period 1964-1974, was assigned to the Intelligence Division where he had responsibility, inter alia, for developing FBI policies vis-a-vis the New Left.

20. George C. Moore is an official of the FBI who, during most of the period 1964-1974, was assigned to the Intelligence Division where he had responsibility, inter alia, for developing FBI policies with respect to persons thought by the FBI to be "Key Extremists" or "Key Black Extremists."

21. Robert G. Kunkel is the Special Agent in Charge (SAC) of the Alexandria Field Office of the FBI and was from July, 1970, until October, 1972, the Special Agent in Charge (SAC) of the Washington, D.C. Field Office.

22. John J. McDermott is an employee of the FBI currently assigned to duty in the J. Edgar Hoover Building and who was from October, 1972, until June, 1974, the SAC of the Washington, D.C. Field Office.

23. Nick Stames is currently the SAC of the Washington, D.C. Field Office.

24. David Rarrity, Charles M. Sawyer, Robert E. Yates, Robert W. Feuer, Terry O'Connor, Clifford F. Arney, F. F. Burgess, Charles A. Ferguson, C. Edwin Glass, Fred B. Griffith, Gerald T. Grimaldi, Peter A. Gulotta, Norman H. Hieronymi, Courtland J. Jones, Richard W. Kaiser, Joseph E. Keller, Hilmer H. Krebs, Paul D. Lamberth, Robert F. Olmert, John R. Palmer, Gerould W. Pangburn, Edward Rudiger, Wilfred R. Schlarman, John L. Stanley, Garnett T.

Tunstall, Edwin A. Waite, Jr., Leonard E. Webster, James F. Whalen, and Philip H. Wilson were employees of the Washington Field Office of the FBI during part or all of the period 1964-1974.

25. The District of Columbia is responsible for the acts and liabilities of its employees and agents.

FACTS

26. From 1967 or 1968 to 1974, the defendant D.C. supervisory officials authorized or acquiesced, and the defendant D.C. agents and informers participated in, various activities of surveillance, disruption and interference aimed at plaintiffs and others who engaged in demonstrations and other forms of political activity in the District of Columbia, with particular emphasis on persons and groups active in the anti-Vietnam War movement. These activities were conducted chiefly through the Intelligence Division of the Metropolitan Police Department. Large sums of money, including $70,000 in fiscal 1972, were used by the defendant D.C. supervisory officials and agents to pay the defendant informers to participate in these activities.

27. The surveillance actions of defendant D.C. officials, agents and informers against plaintiffs included using undercover agents to fraudulently gain entry to private meetings to learn the plans and programs of plaintiffs, electronic surveillance without judicial authorization, breaking and entering to obtain membership lists and other private political documents, mail interception, and physical surveillance, that is, surreptitiously following plaintiffs and monitoring plaintiffs' activities.

28. Efforts by defendants or their agents to disrupt and interfere with the plaintiffs' political activities included, but were not limited to, urging violent or unlawful actions, and supplying the public and/or news media with false information about the plaintiffs and their plans.

29. The defendant FBI officials and agents engaged in the same activities against the plaintiffs from 1968 to 1973 as those described in paragraphs 26 through 28, above.

30. Some or all of the activities of defendants described in paragraphs 26 through 29, above, were conducted pursuant to a plan formulated by the FBI and/or the Metropolitan Police Department to conduct surveillance upon and to disrupt the activities of certain political groups viewed by said defendants as the "New Left."

31. Some or all of the activities of defendants described in paragraphs 26 through 29, above, were conducted pursuant to a plan formulated in 1968 by defendants Sullivan and Brennan and other unknown FBI officials, known as "COINTELPRO/New Left." This program was designed to conduct surveillance upon and to cause disruption of the activiites of what the defendants regarded as the "New Left." Defendant FBI supervisory officials directed the field offices of the FBI to participate in this program.

32. The Washington, D.C. field office of the FBI, directed successively by defendants Stames, Kunkel, and McDermott, as Special Agent in Charge, participated in the COINTELPRO program, and solicited and received the active participation in that program of defendant D.C. supervisory officials, agents, and informers.

33. The aforementioned activities of the defendants were purportedly conducted pursuant to their official capacities, and were conducted by said defendants, individually or in concert:

(a) Knowing such actions to be illegal and with the intention of injuring plaintiffs; or

(b) With reckless disregard of plaintiffs' rights; or

(c) Without reasonable basis to believe such actions were legal; or

(d) Through negligently failing to know or inquire concerning the legality of such actions; or

(e) As a conspiracy or part of a conspiracy by the D.C. defendants or the FBI defendants or both groups of defendants to violate plaintiffs' First and Fifth Amendment rights.

34. In 1975 and at other times, the defendants, including in particular the defendant Zanders, attempted to conceal the aforementioned tortious actions of the other defendants, or conspired to conceal them, by destroying many of the records of the aforementioned illegal activities after their actions had been publicly exposed.

WRONGS

35. The aforementioned actions of defendants violated plaintiffs' rights in one or more of the following respects:

(a) They violate plaintiffs' rights under the First and Fifth Amendments of the United States Constitution;

(b) They violate plaintiffs' rights under the Fourth Amendment of the United States Constitution, and plaintiffs' common law rights against trespass and conversion;

(c) They violate plaintiffs' constitutional and common law rights of privacy in their affairs, privacy in their beliefs, and privacy in their political discussions, beliefs and associations;

(d) They violate plaintiffs' rights under 42 U.S.C. 1986 by defendants' failure to exercise the power they possessed to prevent or aid in preventing the illegal acts and conspiracy described herein;

(e) They violate plaintiffs' rights under 18 U.S.C. 2520; 23 D.C. Code 554; and 18 U.S.C. 1702; and

(f) They constitute a conspiracy in violation of 42 U.S.C. 1985(3).

INJURIES

36. The foregoing actions of defendants injured plaintiffs by violating their constitutional rights, by impeding their efforts to bring about a hasty conclusion to the Vietnam War, by otherwise impeding lawful political efforts of plaintiffs, by falsely tainting plaintiffs' efforts and movement and thus preventing the plaintiffs from attracting even greater and more rapid and effective public support than they did, and by causing apprehension among the public concerning the freedom and privacy of engaging in political activity so as to permanently injure plaintiffs' efforts to gain greater participation in and acceptance of their political causes and objectives.

RELIEF

WHEREFORE, Plaintiffs pray for judgment against each defendant, jointly and severally, as follows:

1. Awarding each plaintiff $50,000 compensatory and $100,000 punitive damages for conspiracy to violate plaintiffs' constitutional and other rights;

2. Awarding each plaintiff $10,000 compensatory and $20,000 punitive damages for violation of First Amendment rights;

3. Awarding each plaintiff $10,000 compensatory and $20,000 punitive damages for violation of Fourth Amendment rights, or trespass and conversion;

4. Awarding each plaintiff $100 per day compensatory damages (or $1,000 if greater) for each day upon which the defendants intercepted plaintiffs' oral communication in violation of 18 U.S.C. 2520 or 23 D.C. Code 554;

5. An injunction ordering the defendants to produce forthwith any and all files of a non-criminal nature on the plaintiffs' political activities, affiliations, and beliefs and to

destroy any copies of or reference to said records in any files under the control or supervision of the defendants;

6. Awarding plaintiffs costs and attorneys' fees; and

7. Such other relief as the Court deems just.

The plaintiffs demand a trial by jury.

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